

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Revision No.1971 of 2006
Date of Decision: July 11, 2007

Sumit @ Kalia

...Petitioner

VERSUS

State of Haryana

...Respondent

Criminal Revision No.443 of 2007
Date of Decision: July 11, 2007

Sumit @ Kalia

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Sanjay Vashisth, Advocate,
for the petitioner.

Mr.S.K.Hooda, Sr.DAG, Haryana,
for the State.

RANJIT SINGH, J.

This order will dispose of two Criminal Revision Nos.1971 of 2006 and 443 of 2007 (Sumit @ Kalia Vs. State of Haryana). The facts are being taken from Criminal Revision No.1971 of 2006.

Petitioner, who stands summoned under Section 319 Cr.P.C. vide order dated 8.9.2006, has impugned the said order by filing Revision Petition No.1971 of 2006.

Om Parkash son of Ram Singh, resident of Kakroli Hukami lodged FIR on 14.9.2004 alleging that his son Satish was shot dead by Pawan Kumar son of Mange Ram. The motive for this offence, as alleged in the FIR, is that they both had quarreled earlier, which was compromised by the panchayat, but Pawan Kumar still carried a grudge and accordingly committed this offence. During the course of investigation, some evidence had surfaced indicating the involvement of the present petitioner as having conspired with the main accused to commit this murder. Investigation, however, found the petitioner innocent and accordingly he was shown in column No.2. However, Dharam Pal, while appearing as a witness, gave statement before the court implicating the present petitioner. The prosecution accordingly moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused, which was allowed on 8.9.2006. The petitioner impugned the said order by filing the above referred revision petition. During the pendency of this petition, charge was framed against the petitioner, which was separately impugned by him by filing Criminal Revision No.443 of 2007, which has also been heard with the present revision petition.

The counsel for the petitioner, by referring to the

statement of PW-1 Dharam Pal, submits that the petitioner could not have been summoned under Section 319 Cr.P.C. on the basis of said statement as this could not be considered evidence because the witness had only been examined in chief and was yet to be cross-examined. In support of his submission, the counsel has referred to the case of **Mohd.Shafi v. Mohd.Rafiq and another**, 2007(2) RCR (Criminal) 762. In this case, the Hon'ble Supreme Court has held that Court cannot summon a person on the basis of examination-in-chief. The relevant observations made in this regard are:-

“The trial Judge, as noticed by us, in terms of Section 319 of the Code of Criminal Procedure was required to arrive at his satisfaction. If he thought that the matter should receive his due consideration only after the cross-examination of the witnesses is over, no exception thereto could be taken far less at the instance of a witness and when the State was not aggrieved by the same.

From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It

is accordingly set-aside. The appeal is allowed.”

The counsel for the petitioner would also urge that additional accused can be added where the court is hopeful of a reasonable prospect of a case against the newly added accused ending in his conviction for the offence concerned. In this regard, reference has been made to the case of **Palanisamy Gounder and another Vs. State Represented by Inspector of Police, 2006(2) RCR (Criminal) 235**. State counsel, however, has attempted to justify the order summoning the petitioner as an additional accused.

The parameters for summoning an additional accused under the provisions of Section 319 Cr.P.C. have now been sufficiently defined in various judgments of the Supreme Court. In **Michael Machado Vs. Central Bureau of Investigation, 2000(2) RCR (Criminal) 75**, it is held that the courts should refrain from adding an additional accused, unless it is hopeful that there is a reasonable prospect of the case against such newly added accused ending in his conviction. Hon'ble Supreme Court in the case of **Palanisamy Gounder and another's case (supra)** has reiterated this principle by following the law laid down in **Michael Machado's case (supra)**. Reference in this regard can also be made to the case of **Krishnappa Vs. State of Karnataka, 2004(4) RCR (Criminal) 678**. The counsel for the petitioner is justified in submitting that such satisfaction can be arrived at upon completion of the cross-examination of the said witness as has been held in the case of **Mohd.Shafi** (supra). The trial court, while summoning the petitioner as an additional accused, appears to have ignored these parameters

as laid down by the Hon'ble Supreme Court. This can be so observed from the impugned order. While summoning the petitioner, the trial court has observed that law is well settled that when there is a prima-facie evidence available on the file to proceed against a person to face trial, he can be summoned under Section 319 Cr.P.C. This observation of the trial court is not in tune with the law laid down by the Hon'ble Supreme Court in the cases referred to above, like, **Palanisamy Gounder and another,** **Michael Machado** and **Krishnappa.** In view of the law laid down by the Hon'ble Supreme Court in **Mohd.Shafi's case** (supra), the summoning of the petitioner as an accused before conclusion of the cross-examination of the witness cannot be justified.

The impugned order, as such, cannot be sustained. The same is set-aside and the case is remanded back to the trial court to re-consider and re-do the entire exercise keeping in view the law laid down by the Hon'ble Supreme Court in the judgments, referred to above and pass an appropriate order afresh. Needless to say that further proceedings held against the petitioner in framing charge, if in continuous, would pend till the application filed by the prosecution under Section 319 Cr.P.C. is decided afresh. The trial court would be at liberty to decide the said application upon completion of cross-examination of PW-1, which has formed the basis of summoning the petitioner.

The present revisions are disposed of accordingly.

July 11, 2007
ramesh

(RANJIT SINGH)
JUDGE

